

THE HON'BLE SRI JUSTICE A. GOPAL REDDY

W.P.NO.30043 OF 1995

Date: 16.03.2006

Between:

Smt. Gowramma

.... Petitioner

and

The State Electricity Board, rep. by its Principal Secretary, Hyderabad & others.

... Respondents

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ORDER:

In this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks a direction to the respondents to pay compensation at the rate of Rs.2,00,000/- for the death of her husband viz. Chinna Jammanna (here-in-after be referred to as 'the deceased') due to electrocution on 25.11.1994.

The brief facts of the case are that, on 25.11.1994, at about 10.30 a.m., while the deceased was pulling rickshaw loaded with aluminium pipes to unload the same at R.K. Apartments, Barkatpura, the said pipes came into contact with the electric transformer of the said Apartments, which resulted in the death of the deceased. It is pleaded that the respondents did not construct any wall in

order to protect the transformer while installing the same at the place of incident.

The learned counsel for the petitioner submits that the respondents have failed to take precautions while installing the transformer at the place of incident and, therefore, they are vicariously liable to pay the compensation to the petitioner.

The learned standing counsel appearing for the respondents, on the other hand, submits that the petitioner failed to prove the negligence on the part of the respondents.

At the outset, it has to be seen that the present writ petition is barred by limitation. Article 72 of the Limitation Act stipulates that necessary proceedings are to be initiated within one year of the incident. Admittedly, in this case, the alleged incident has taken place on 25.11.1994 and the writ petition has been filed on 28.12.1995 i.e. nearly one year after the alleged incident.

The specific plea of the respondents is that the deceased died of electrocution inasmuch as the aluminium pipes loaded in the rickshaw which was being pulled by him came into contact with the transformer of R.K. Apartments. In such a case, a duty is cast upon the petitioner to implead the owners of the said apartments as party respondents. There is no explanation, worth its name, forthcoming on behalf of the petitioner for non-impleadment of the owners of R.K. Apartments.

The grievance of the petitioner is that inasmuch as the transformer was not fenced in a precautionary manner, the respondents are vicariously liable for the tortuous act. The respondents, on the other hand, disputes their liability. In that view of the matter and in the absence of any proof of negligence on the part of the respondents, it cannot be said that the respondents are liable to pay the compensation.

Above all, it is well settled that where disputed questions of fact are involved, a petition under Article 226 of the Constitution of India is not a proper remedy {see *Chairman, Grid Corporation of Orissa Ltd. V. Sukamani Das* (AIR 1999 Supreme Court 3412)}. The only remedy available to the petitioner is to approach the civil Court by way of filing a suit claiming compensation for the death of her husband on account of alleged electrocution.

For all the reasons aforementioned, the writ petition is dismissed.

16.03.2006

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